



PUBLIC DISCLOSURE COMMISSION

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9:00 a.m.
January 22, 2002

MINUTES – REGULAR MEETING

Evergreen Plaza Bldg. Room 206
711 Capitol Way South
Olympia, Washington

COMMISSION MEMBERS PRESENT

Christine Yorozu, Chair
Gerry Marsh, Vice Chair
Lois Clement, Secretary
Susan Brady, Member

STAFF PRESENT

Vicki Rippie, Executive Director
Susan Harris, Assistant Director
Michael Smith, Chief Tech. Officer
Nancy Krier, Asst. Attorney General
Linda Dalton, Sr. Asst. Attorney General
Ruthann Bryant, Secretary

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Christine Yorozu at 9:05 a.m. in the Evergreen Plaza Building, Room 206, Olympia, Washington.

Commissioner Comments

Commissioner Yorozu commented on an editorial board meeting at The Olympian she and Vicki Rippie attended. She also congratulated Susan Harris on her 25-year anniversary as an employee of the Public Disclosure Commission.

Citizen Comments/Concerns

No citizen comments were expressed.

Minutes

Commissioner Marsh noted that page 10 of the minutes shows “Mr. Smith” when it should read “Mr. Niezwagg.”

Motion 02-076

Moved by Commissioner Clement, seconded by Commissioner Marsh:

The Commission adopts the minutes of the special meeting of December 4, 2001, as amended.

The motion passed unanimously.

Legislation

Vicki Rippie summarized legislation that may have an effect on the provisions of RCW 42.17. She also noted that Commissioner Clement had her Senate confirmation hearing on January 17th.

Ms. Rippie reported that Representative Linville introduced HB 2617 to add a statutory provision requiring persons filing campaign disclosure reports to identify the occupation and the name and address of the employer of the persons who contribute \$100 or more to a candidate or political committee.

Commissioner Brady commented that the only way she would consider supporting HB 2617 is if it were changed to specify a reporting threshold of more than \$100 as reflected in the rule amendment made at the December 4, 2001 meeting.

The Commission authorized Ms. Rippie to report that a majority of the Commission supports the concept of requiring occupation and employer information to be disclosed; however, a majority also believes that more than \$100 is the appropriate level.

Rule Making

Susan Harris summarized potential rule making to amend rules to conform to changes set forth in SB 6109 concerning Independent Expenditures, rules concerning Exempt Activities, and amending WAC 390-16-055 to reflect statutory changes.

Ms. Harris noted that staff would be conducting stakeholder meetings over the next two months to

allow all interested persons an opportunity to participate.

Motion 02-077

Moved by Commissioner Brady, seconded by Commissioner Marsh:

The Commission authorizes staff to move forward with the rule-making process.

The motion passed unanimously.

Status Report

Vicki Rippie reported on the transition to electronic filing and summarized research on incumbent state officials who appear to be required to file campaign reports electronically. She suggested allowing a transitional period before taking enforcement action.

Commissioner Brady noted that this requirement was put into place by the Legislature and she suggested sending out notification to candidates and political committees with a deadline for notifying the agency regarding what steps they would be taking to comply with the law.

The Commission requested that staff send out reminder letters and provide a status report at the February meeting.

Staff Reports

Executive Director

Vicki Rippie briefly summarized the budget status report.

Assistant Director

Susan Harris recapped her Year in Review summary and noted that all of the JLARC recommendations have been implemented. She also outlined some of the highlights of the Administration, Disclosure and Compliance divisions of the agency.

Commissioner Yorozu complimented Ms. Harris on the format and the detailed information contained in her "Year in Review" report.

Chief Technology Officer

Michael Smith reported that staff held an open house on the lobbyist electronic filing application. Mr. Smith also summarized the IT Division's major accomplishments for 2001.

Commissioner Yorozu also complimented Mr. Smith on the accomplishments achieved over the last two years.

Assistant Attorney General

Nancy Krier reported that the court has awarded the PDC \$190,000 for attorney's fees and costs in the case against the Washington Education Association Political Action Committee. She noted that the WEA-PAC has filed an appeal, and the fees award is not payable unless PDC prevails at the appellate level.

Personal Financial Affairs Reporting

New Modification Request

*Sarah Jewell, Regent, Washington
State University*

Mr. Stutzman reported that Ms. Jewell requests an exemption from reporting the business and governmental customers of Premera and Premera Blue Cross, a corporation of which she is a director.

Motion 02-078

Moved by Commissioner Brady, seconded by Commissioner Clement:

The Commission grants the requested reporting modification to Sarah Jewell subject to her recusal from voting as a regent regarding any matters concerning Premera, or its subsidiary, Premera Blue Cross.

The Commission finds that literal application would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.

The motion passed unanimously.

Starbuck School District

Susan Harris reported on a request to vacate the Commission's order granting a Petition for Disclosure affecting elected and appointed officials and future candidates in Starbuck School District No. 35. Ms. Harris noted that the district continues to have fewer than 1,000 registered voters and qualifies to be exempt from disclosure as outlined in RCW 42.17.405.

Motion 02-079

Moved by Commissioner Clement, seconded by Commissioner Marsh:

The Commission vacates the Order of Petition for Disclosure for Starbuck School District No. 35, as requested.

The motion passed unanimously.

Personal Financial Affairs Reporting

Professional Staff

Susan Harris stated that the Public Disclosure Law requires professional staff of the House, Senate, and Office of the Governor to file an annual Financial Affairs Statement. The Commission is required to conduct a review of these professional staff positions each year. The House, Senate and Governor's office have submitted a list of persons and positions they believe meet the requirements of professional staff.

Motion 02-080

Moved by Commissioner Clement, seconded by Commissioner Marsh:

The Commission approves the lists of professional staff required to file Financial Affairs Statements with the Public Disclosure Commission as proposed by the Governor's Office, House of Representatives, and State Senate.

The motion passed unanimously.

Enforcement Matters

Reports

*Rick Luther, Kevin Esping, and
Christopher Hurst Case #02-272
And Black Diamond Citizens for
Responsible Government
Case #02-273*

Susan Harris reported on a citizen's action complaint filed by Robert Edelman with the Office of the Attorney General against Rick Luther, Kevin Esping and Christopher Hurst for alleged violations of RCW 42.17.530 for sponsoring political advertising containing false statements of material fact made with actual malice.

In addition, Ms. Harris reported on a second citizen's action complaint filed by Robert Edelman with the Office of the Attorney General against Black Diamond Citizens for Political Responsibility for alleged violations of RCW 42.17.530 for sponsoring political advertising containing false statements of material fact made with actual malice.

She noted that the political advertisements were sent to Black Diamond voters opposing the election of 2001 mayoral candidate Barry Kombol.

Ms. Harris summarized both cases and reported that after careful review of the alleged violations and relevant facts, staff found no reason to believe that a violation had occurred and recommended that the Commission take no action on either complaint. Staff also requested that the Commission report the findings to the Office of the Attorney General and recommend no further action be taken.

Citizens Chris Clifford, Richard Enfield and Sharon Mercer commented in support of Mr. Kombol.

Barry Kombol defended his reputation and stated that charges are simply allegations, not proven evidence.

Bob Edelman stated that the investigative report does not accurately reflect the statements made in the complaint.

Rick Luther commented that a thorough investigation was conducted and he felt that the community deserved to be made aware of the background of Mr. Kombol before the election.

Motion 02-081

Moved by Commissioner Brady, seconded by Commissioner Clement:

The Commission takes no action on the complaint against Rick Luther, Kevin Esping and Christopher Hurst, PDC Case #02-272, and Black Diamond Citizens for Responsible Government, PDC Case #02-273, and returns the matter to the Office of the Attorney General with the recommendation that no further action is warranted.

The motion passed unanimously.

Hearings

Geoff Simpson, Case #01-130
Keven Rojecki, Case #02-277
John Gallup, Case #02-278

Senior Assistant Attorney General Linda Dalton summarized the case against Geoff Simpson, Keven Rojecki and John Gallup for alleged violation of RCW 42.17.130 by using public resources of the Kent Fire Department to assist the 2000 campaign of Geoff Simpson for State Representative.

Ms. Dalton then read the Stipulations of Facts and Violations into the record noting that the respondents and staff have been unable to arrive at a mutually agreeable penalty recommendation for the Commission's consideration.

James Oswald, attorney, introduced Mr. Simpson, Mr. Rojecki and Mr. Gallup and briefly interviewed each respondent.

John Gallup, captain with the City of SeaTac Fire Department, stated that he was acting battalion chief on the day of the photo session. Mr. Gallup reported that at the time of the photo session it was his understanding that as long as the photos did not reflect a department's name or logo, it was not a violation. He noted that the City of SeaTac Professional Fire Fighters recently sent out a memo to all IAFF Locals focusing on the prohibition of such use of department resources in an effort to get the word out to all members.

Keven Rojecki, firefighter with the City of SeaTac, commented that, as he understood it, he received permission for the photo session from Chief Downs on the condition that any visible logos and department identification were concealed and to share the photos with the chief before they went to print. Mr. Rojecki also commented that as a legislative liaison for the IAFF, he has assisted in educating the general membership on the issue of RCW 42.17.130.

Commissioner Clement expressed concern with the lack of training on the use of facilities at conferences held by the International Association of Fire Fighters as well as similar events.

Jim Oswald noted that there had been a widespread misunderstanding of the rule prior to 2000 when a similar issue was brought to the Commission's attention. However the information was not efficiently circulated due to the absence of the union's political director. Since that time, the International association has been working towards educating its members.

Representative Geoff Simpson commented that it was his understanding that as long as there were no identifying marks in the photographs, the use of fire equipment was permissible. Mr. Simpson

also stated that his previous understanding of the PDC rules was strictly related to what forms needed to be filed and when.

Commissioner Yorozu expressed concern with the lack of education by the city on the use of public facilities.

Commissioner Brady commented that the public facilities prohibition has been a part of the public disclosure law since the early 1970s.

Motion 02-082

Moved by Commissioner Marsh, seconded by Commissioner Clement:

The Commission accepts the Stipulation of Facts and Violations in PDC Case #02-278, John Gallup, and assesses a penalty of \$1,000 with \$750 suspended based on no future violations of RCW 42.17 for two years.

The motion passed unanimously.

Motion 02-083

Moved by Commissioner Clement, seconded by Commissioner Marsh:

The Commission accepts the Stipulation of Facts and Violations in PDC Case #02-277, Keven Rojecki, and assesses a penalty of \$1,000 with \$500 suspended based on no future violations of RCW 42.17 for two years.

The motion passed unanimously.

Motion 02-084

Moved by Commissioner Brady, seconded by Commissioner Clement:

The Commission accepts the Stipulation of Facts and Violations in PDC Case #01-133, Geoff Simpson, and assesses a penalty of \$2,500 with \$500 suspended based on no future violations of RCW 42.17 for two years.

Voting for: Commissioners Brady, Yorozu and Clement.

Voting Against: Commissioner Marsh

The motion passed.

Executive Session

The Commission went into executive session at 12:30 p.m. to discuss pending litigation with legal counsel.

Public Session

The Commission returned to public session at 1:00 p.m.

Enforcement Matters (cont.)

Requests for Review

*NextLink WA, Inc. (XO Comm.)
Case #02-208*

Phil Stutzman reported that a brief enforcement hearing was held November 1, 2001, in which NextLink Washington was found to have violated RCW 42.17.180 for failure to timely file an L-3, Lobbyist Employer report . NextLink was assessed a penalty of \$150.

Mr. Stutzman noted that NextLink Washington, Inc., provided a letter stating that the company had changed its name to XO Communications in September of 2000 and filed the report timely in February.

Commissioner Yorozu commented that it is the responsibility of the employer to notify the Public Disclosure Commission of a name change and it is not acceptable to not provide notification until after the brief enforcement hearing had been held.

There was no motion to review this matter.

*WA State Drilling and
Groundwater Assn.
Case #02-250*

Phil Stutzman reported that a brief enforcement hearing was held November 1, 2001, in which the

Washington State Drilling and Groundwater Association was found to have violated RCW 42.17.180 for failure to timely file an L-3, Lobbyist Employer report . A penalty of \$150 was assessed.

Mr. Stutzman noted that the WA State Ground Water Association provided a letter stating that the organization had changed its name in 2000. The association had sent notification of the name change immediately upon receiving the reminder letter in June.

Motion 02-085

Moved by Commissioner Brady, seconded by Commissioner Marsh:

The Commission vacates the order in PDC Case #02-250, Washington State Ground Water Association.

The motion passed unanimously.

Request for Reconsideration

Lawrence Soriano, Case #02-263

Phil Stutzman reported that an enforcement hearing was held December 4, 2001 in which Mr. Soriano was found in violation of RCW 42.17.040, .080 and .090 by exceeding limits of the Mini reporting option. Mr. Soriano was assessed a penalty of \$1,000 with \$500 suspended.

Mr. Soriano was present by telephone and stated that he felt that there was a rush to hear the facts and impose a penalty in the enforcement hearing and he requested further consideration of the penalty and a reduction in the penalty amount.

Motion 02-186

Moved by Commissioner Brady:

The Commission upholds the violation of RCW 42.17.040, .080 and .090 in PDC case #02-263 against Lawrence Soriano and assesses a penalty of \$1,000 with \$750 suspended.

The motion died for lack of a second.

There was no further motion to reconsider this matter.

Hearing

Protect our Pets and Wildlife, Case #02-263

Linda Dalton summarized the case against Protect our Pets and Wildlife for alleged violations of RCW 42.17.080 and 42.17.090 by failing to timely report orders placed and estimated expenditures during its 2000 campaign supporting Initiative 713. She noted that Commissioner Yorozu referred the case to the full Commission following a Brief Enforcement Hearing on November 1, 2001.

PDC Political Finance Specialist Suemary Trobaugh testified that Protect Our Pets failed to timely report "orders placed" on Schedule B of the C-4 reports. She explained that Protect our Pets hired the firm of Fenn & King as its agent to arrange for and purchase its political advertising media buys for ads to be run between August and November of 2000. Staff contends that Protect our Pets had a requirement to report, as obligations, the value of the orders that had been placed with media outlets. The amount spent on these media buys totaled \$535,205.

Attorney Shawn Newman representing Protect our Pets and Wildlife argued that simply inquiring about or requesting a proposal for a media buy does not constitute an obligation and the question is whether or not an offer to purchase is the same as an order placed. Mr. Newman also commented that it was his understanding that the issue following the brief enforcement hearing was whether Protect our Pets was aware of the two-week cancellation policy in effect at some media outlets not the issue of when the offers to purchase were reportable.

The Commission requested that the parties prepare a brief to be submitted to staff by

February 13th and continued the hearing until the February meeting.

Adjournment

Commissioner Yorozu adjourned the meeting at 3:30 p.m. The next meeting is scheduled for Tuesday, February 26, 2002.

Approved by the Commission 2/26/02